IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23090 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MIYABHAI UMARBHAI CHAUHAN DECD. THRO. HIS HEIR & 1 - Petitioner(s)

Versus

STATE OF GUJARAT THRO. SECRETARY & 4 - Respondent(s)

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Appearance :

MR SHITAL R PATEL for Petitioner(s) : 1 - 2.
MR DIPEN DESAI, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 19/12/2006

ORAL JUDGMENT

1. Rule. Mr.Desai, learned AGP waives service of notice of Rule for Respondents No.1, 2, and 3.

The other respondents, though served, have not appeared, but it has been stated by the learned Counsel for the petitioner that they are supporting the petitioner.

2. The petitioner in this petition has challenged the order passed by the Mamlatdar and its confirmation by the Dy. Collector and by the Revenue Tribunal, whereby it has been held that the land shall be subject to the restriction under Section 43 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the Act”).

3. As regards the facts of the present case are concerned, it appears that the proceedings under the Act were initiated and the petitioner became deemed purchaser and before the proceedings could be finalised on 28.11.1965 the landlord executed the registered sale deed in favour of the tenant and the ownership was transferred. In the year 1984 the proceedings were initiated by the Mamlatdar and ultimately he came to the conclusion that the sale by the landlord in favour of the tenant is regularised by taking

penalty of Re.1, but it was observed that the right of the purchaser of the land under the Act shall be subject to the restrictions under Section 43 of the Act. The matter was carried before the Dy. Collector and thereafter before the Tribunal, both the orders were confirmed and it is under these circumstances, the petitioner has approached this Court by the present petition.

4. Upon hearing the learned Counsel appearing for the petitioner and Mr.Desai, learned AGP for the State Authorities, it appears that more or less similar question came to be considered by this Court in case of **"State of Gujarat and Anr. v. Ramji Devjibhai Rabari and Anr.", reported in 2006(13) Gujarat High Court Judgements, 386,** on the aspects as to whether the land can be made subject to restrictions under Section 43 of the Act when the sale is held to be bonafide and the original landlord, who is holding the property was not holding the land as the restricted tenure. This Court in the said decision at paragraphs 8 and 9 observed as under:

"8. Even if it is considered that the father of the purchaser was shown as cultivator even prior to 1960-1961 and could be said as tenant of the land in question, which was held by the vendor, then also, by the provisions of Section 64 of the Act, it cannot be said that the sale by the landholder of the land in question is completely banned. Section 64 of the Act provides for the sale of the land in favour of permanent tenant and other tenant and the manner and method of fixing of price is provided. Sub-section (7) also provides for enabling the landholder to sell any land to the tenant in actual possession at a price mutually agreed between him and the tenant, subject to the provisions of Section 63A. If such an application is made, it has been provided that the Tribunal shall grant permission, if it is satisfied that the price has been agreed voluntarily by the tenant. Sub-section (8) provides that any sale made in contravention of this Section

shall be invalid. The object of the Act is to confer benefit upon the tenant who is actually cultivating the land and Section 64 including sub-Section (7) and (8) are essentially to see that the rights of the tenants are protected and he may not be subjected to compulsion to purchase the land at a price for which, he has not voluntarily agreed. It appears that with a view to see that the landholder may not be in a position to sell the land frustrating the rights of the tenant over the land, sub-Section(8) provides for sale in contravention to Section 64 as invalid, but thereby, it cannot be said that if it is a voluntary sale entered into by the landholder in favour of the tenant without taking benefit of the Act, the rights which may be acquired by the tenant shall be subject to the restriction under Section 43 of the Act inspite of the fact that the landholder who transferred the land was holding the land as unrestricted tenant.

The possession of the land acquired by the tenant under the statute by fixation of price and the sale by the Mamlatdar and ALT cannot be equated with the position of the person, who may be in revenue record as tenant after having purchased the land from the landholder by paying full consideration/price of the land and the landholder having voluntarily transferred the land in favour of such persons.

9. In the present case, the additional circumstance, which has been rightly recorded by the Tribunal is that, even in the proceedings of the Tenancy Case No. 16/67, the transaction of sale is held to be bonafide and therefore, it is not in any case with a view to frustrate the provisions of the Act. If the transaction is held to be bonafide, then as per the provisions of the Transfer of Properties Act, the purchaser will acquire all rights as held by the vendor over the land in

question. If such an analogy is applied in the present case, the Tribunal has rightly observed that the land, which is purchased by the purchaser under the Registered Sale Deed, which is held to be bonafide in the Tenancy Case proceedings, would not be subject to the restrictions under Section 43 of the Act."

5. The same view is required to be taken in the present case and no other distinguishing circumstances, which may have bearing to the facts of the present case, are brought to the notice of this Court.

6. Under the above circumstances, the impugned orders passed by the Mamlatdar and its confirmation thereof by the Dy. Collector and the Tribunal so far as it relates to putting the land under the restrictions of Section 43 of the Act are concerned, deserve to be quashed and set aside. Hence, they are quashed and set aside. Rule made absolute to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs.

19.12.2006 **(Jayant Patel, J.)**

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